



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Virginia Department of Health
VAC Chapter Number:	VAC 12-5-550
Regulation Title:	Rules and regulations Governing Vital Records
Action Title:	Proposed Amendments to Vital Records Regulations
Date:	January 4, 2000 (revised March 2002 and August 2002)

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The proposed amendments to existing regulations focuses on making the language clearer for the citizens of the Commonwealth to understand, replacement of old terminology and establish protections against the unauthorized, unwarranted and indiscriminate disclosure of vital records (birth, death, fetal death, marriage and divorce). These regulations would also allow the use of current technology to file vital records electronically. Additionally, these regulations set forth procedures for filing home births, fees for a vital record and administrative fees for amending or filing a delayed birth. Resulting amendments may also address other issues relating to these regulations that the public, regulated persons, and health planning communities deem appropriate.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

There was an addition to the regulation as a result of legislation passed during the 2003 General assembly. The legislation resulted in the adding a new type of vital record called "Certificate of Birth Resulting in a Stillbirth". The new regulation will be found in 12VAC5-550-125. The purpose is to provide parents who have had a fetal demise of twenty weeks or more gestation to receive upon request and an appropriate fee to receive the above named certificate. Prior to the passage of this legislation parents were only able to obtain a copy of the report of spontaneous fetal death.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

The State Board of Health took final action to approve the Rules and Regulations Governing Vital Records on April 25, 2003.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

Sections 32.1-12 and 32.1-250 of the Code authorizes the Board of Health to promulgate procedural rules for the conduct of activities for vital records and health statistics system and to promulgate regulations. The Board has the responsibility to promulgate, amend, and repeal, as appropriate, regulations necessary to implement the vital records and health statistics system, and to collect, catalog, and evaluate information reported to it. The scope of the mandate is appropriate for the adequate and effective administration of vital records and health statistics division and for the program necessary to operate it.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the regulations, and the intended amendments, is to ensure the uniform and effective administration of the system of vital records through the establishment and enforcement of regulations setting the minimum standards for completing and filing vital records, in compliance with state and federal laws. The purpose of the regulations cannot be served adequately without a reliable and efficient system in which good and permanent vital record files are acquired and preserved for safekeeping and current health statistics are effectively reported.

Most of the Regulations Governing Vital Records have not been amended since they were promulgated in 1950. The contents of the regulations needs updating to reflect current societal practices, to improve clarity of language in specific sections, and to add other requirements, such as the reporting of deaths, the registration of delayed birth registrations and the evidence needed for home births. These amendments would make the regulations easier to comprehend by the affected entities and the public while at the same time would make it more difficult for fraud to occur.

Moreover, additional provisions need to be amended and added in light of current changes in reporting methodologies and technology. For example, adding provisions would allow for the electronic reporting of birth data directly from the hospitals to the State Registrar as allowable by the Code as amended in 1994. By electronic reporting, the entire birth registration process is more accurate and much faster, and thus, for example, health data relating to infants at birth becomes available in a more timely way for appropriate public response to such matters as serious congenital anomalies.

Fee's for the issuance of a vital record have been the same since 1994 and no fee's have ever been charged for amendments of filing of a delayed birth registration. The cost of labor and materials has increased during this period.

Removal of issuance of birth registration card not accepted for official or legal purposes.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

The proposed amendments are necessary to recognize the growing number of home births that are not registered by attendants at delivery and to assist in defining the types of evidence necessary to establish the required registration information, as well as to update certain terms and

provisions as a result of state or federal law. Additions or enhancements to the regulations include:

1. Clarification for filing a late or delayed birth record;
2. Clarification on matters such as primary and secondary evidence required to place a delayed birth on file, who is to birth and death records, and additions to the definition section to adequately reflect terms currently used in the industry for example, funeral service licensee instead of, funeral director; and
3. Incorporation of mandated requirements by statute. Sections 32.1-263B, 32.1-267B and 32.1-268A, require social security numbers or control numbers issued by the Department of Motor Vehicles to be included in the data collected on death, and divorce records. In compliance with the Taxpayer Relief Act of 1997 (PL 105-34), the Social Security Administration (SSA) is required to obtain parents' social security numbers on original social security cards for individuals who have not attained the age 18 and share this information with the Internal Revenue Service (IRS). Parents may request social security cards for their newborn(s), by participating in the Enumeration of Birth program (EAB). Under this program parents sign the birth record requesting that vital records submit required data to SSA and the social security card be sent directly to the parent. This program requires that the social security number of parent(s) be submitted to SSA when social security cards are requested.
4. Removal of issuance of birth registration card.
5. Fee increase and charges for service rendered.
6. Insertion of a provision in response to passage of legislation inserting Section 32.1-258.1 of the Code, authorizing the issuance of certificate of birth resulting in stillbirth.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The primary advantage of these amendments is that it clarifies for citizens the requirements for filing a home birth, late or delayed birth record. Conflicting language has been removed and clearer language was substituted when indicated.

These regulations contain procedural rules for the registration and reporting of vital events including birth, death, fetal death, marriage, divorce and adoption and any changes to a vital

record. They spell out rules for detailing standards and requirements for collecting and reporting vital event information.

Aspects of the regulations affect about 100 hospitals, 480 funeral homes, 35 local health departments and their corresponding districts, four medical examiner district offices, numerous city and county clerks' offices and the citizens of the Commonwealth.

The affected organizations and individuals reviewed these regulations under Executive Order 15 (94) discussed potential alternatives to the regulations to determine if less burdensome alternatives might exist. As the information contained in the vital records is both sensitive and confidential, the advisory committee did not find the requirements for the administration of the system overly burdensome. No known alternatives exist that would better protect the public in this regard.

There are no known disadvantages to the public, private persons, the agency or the Commonwealth presented by these proposed regulations.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

During the public comment period comments were received from the Board of Funeral Directors and Embalmers, which was representing the funeral service directors in the Commonwealth. Four (4) specific areas were address: 1. the ability to file death records electronically and utilize electronic signatures; 2. encourage associate physicians to sign death certificates in the absence of the attending physician as out lined in the Code; 3. Sanctions for non-compliant physicians and 4; use of out of state transit permits.

No other entities provided comments.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

The following changes indicate what this action will accomplish. Most of these changes were contained in the proposed regulation and have been retained in the final regulation:

Definitions, 12 VAC 550-05

Addition of definitions board, Commissioner, Department, informant, primary evidence, midwife, registrant and secondary evidence.

12VAC 5-550-10

Repealed

12VAC 5-550-30

Eliminates confusing language.

12VAC 5-550-40

Repealed

12VAC 5-550-50

Changed Chapter 1.1:1 of Title 9 to Chapter 40 of Title 2.2

12 VAC 5-550-70

Allows the State Registrar to use electronic media to issue forms and supplies for the registration of vital events.

12 VAC 5-550-90

Specifies that electronic media used for the filing of vital records must be approved by the State Registrar.

12VAC 5-550-100

Addition of responsibilities, evidence and data elements required for the filing of home births. The birth is to be registered as soon as possible with the local health department in which the birth occurred.

12VAC 5-550-110

Allows for the use of the controlled number issued by the Department of Motor Vehicles on a death record if the decedent has no social security number.

12VAC 5-550-120

The term funeral service licensee replaced the word funeral director, which has been changed by the regulations governing funeral services.

12VAC 5-550-125

Provides for certificates of birth resulting in stillbirth.

12VAC 5-550-130

Requires that the marriage certificate contain the social security number or control number issued by the Department of Motor Vehicles.

12VAC 5-550-140

Requires that the report of divorce or annulment contain social security number or control number issued by the Department of Motor Vehicle for both the husband and wife.

12VAC 5-550-150

Additional language stating that certificates and records be written legibly in black unfading ink or entered on electronic media approved by the State Registrar.

12VAC 5-550-190

Allows for the use of electronic media for maintaining records and eliminates unnecessary data elements for collection.

12VAC 5-550-200

Changes reporting times from the 5th and 20th of each month to the 5th day of the month for reporting events by special registrars. City and county registrars will transmit reports weekly instead of the 10th and 25th of the month.

12VAC 5-550-210

The term funeral service licensee replaced the word funeral director, which has been changed by the regulations governing funeral services.

12VAC 5-550-240

Adds that a deceased person cannot have a delayed birth record placed on file. Specifies that applications for a delayed birth record not completed within one year will be dismissed and evidence returned to the applicant.

12VAC 5-550-250

Added language that home birth record shall follow procedures in subdivision 3 of 12 VAC 5-550-100.

12VAC 5-550-260

Clarifies what is acceptable as primary evidence when requesting a delayed birth registration.

12VAC 5-550-280

Specifies the conditions for which new birth certificates are established after adoptions, legitimization, and acknowledgements of paternity and court determination of paternity.

12VAC 5-550-290

Changes the word natural to biological and refers to Code § 20-49.8 for the change. Adds a timeframe and condition when a mother may not sign an acknowledgement of paternity.

12VAC 5-550-300

Specifies the timeframe of 10 months at the time the birth or preceding the birth when a mother can sign an affidavit of paternity.

12VAC 5-550-310

Adds the requirement of both parents signatures to change a surname and conditions not requiring the both parents signatures in court determined paternity.

12VAC 5-550-320

In order for the regulations to be in compliance with § 32.1-269E the birth certificate will be amended.

12VAC 5-500-350

Eliminates confusing language and uses the term funeral service licensee replacing the word funeral director, which has been changed by the regulations governing funeral services.

12VAC 5-500-360

Eliminates confusing language and uses the term funeral service licensee replacing the word funeral director, which has been changed by the regulations governing funeral services.

12VAC 5-550-370

Eliminates confusing language and uses the term funeral service licensee replacing the word funeral director, which has been changed by the regulations governing funeral services.

12VAC 5-550-380

Eliminates confusing language and uses the term funeral service licensee replacing the word funeral director, which has been changed by the regulations governing funeral services.

12VAC 5-500-390

Eliminates confusing language and uses the term funeral service licensee replacing the word funeral director, which has been changed by the regulations governing funeral services.

12VAC 5-500-400

Provides instructions for preparing out of state transit permits.

12VAC 5-500-410

Provides instructions for filing emergency death certificates. The term funeral service licensee replaced the word funeral director, which has been changed by the regulations governing funeral services.

12VAC 5-500-430

Provides instructions for preparing disinterment permits. The term funeral service licensee replaced the word funeral director, which has been changed by the regulations governing funeral services.

12VAC 5-550-440

Clarifies the term other reporting source. The term funeral service licensee replaced the word funeral director, which has been changed by the regulations governing funeral services.

12VAC 5-550-450

Clarifies the evidence required to correct or amend a vital record. Specifies where census data used as evidence can be obtained and changes the five-year requirements to be before the registrant's eighth birth date.

12VAC 5-500-460

Clarifies the instructions for amending a vital record.

12VAC 5-500-470

Clarifies who is to obtain birth and death records.

12VAC 5-500-510

This office no longer issue birth cards therefore removed the language or birth registration cards.

12VAC 5-550-520

Increased the fee to \$10.00 for a vital record and added language that a requestor be charged an administrative fee of \$10.00 when documents are amended or a delayed birth registration is requested.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulations provides language to allow for parents who choose to have their child (ren) at home a procedure and time frame for filing the birth of their child (ren) with the State Registrar. It encourages fathers to place their name on their child's birth records by eliminating previous barriers, which allow for this to occur, especially in court ordered paternities. These regulations contain provisions for parents to obtain a social security card for their child at the time of birth by requesting it on the birth record which, is submitted to the State Registrar. There is no major impact on a family's disposable income.